

CA30NHNO5f

77 036

HAMILTON PUBLIC LIBRARY
FEB 25 1977
GOVERNMENT DOCUMENTS

L DIVERSION

A Proposal for a Pilot Project

January 21, 1977

THE
**SOCIAL
PLANNING**

and

RESEARCH COUNCIL
of Hamilton and District

DIVERSION

A Proposal for a Pilot Project

January 21, 1977

Social Planning and Research Council of Hamilton and District
153½ King Street East, Hamilton, Ontario. L8N 1B1


President:

Donald A. McFarlane

Vice-Presidents:

Bishop John C. Bothwell

David E. Seldon



Digitized by the Internet Archive
in 2023 with funding from
Hamilton Public Library

<https://archive.org/details/diversionproposa00unse>

DIVERSION COMMITTEE

Elisabeth Langille, Chairperson

John Flis, J.P., Court Administrator

Donald McLean, Assistant Crown Attorney

Gerry Malcomson, Community Liaison Officer, Hamilton-
Wentworth Regional Police

John Mildon, Supervisor, Ontario Probation and Parole

Stephen Pal, Eatons; Better Business Bureau

Supt. James R. Patterson, Hamilton-Wentworth Regional
Police

Kathleen Patterson, Kelly Girls; Citizen

Elaine Vayda, Board Member, Social Planning and Research
Council; School of Social Work,
McMaster University

Judy Worsley, Legal Aid Secretary; Citizen

TABLE OF CONTENTS

	<u>Page No.</u>
1. The Purpose of Diversion	1
2. Review of the Literature	2
3. Objectives of this Proposal.	4
a) Individual needs	5
b) Community needs	6
4. Target Population	7
5. Procedure	8
a) Screening	8
b) Disposition	10
c) Organization	11
6. Individual Rights	13
a) Is the procedure equitable? . . .	13
b) The status of due process . . .	13
c) Confidentiality	14
7. Evaluation	14

INTRODUCTION

Any process which provides effective alternatives to the established criminal justice system as a response to persons who have offended the values of society as determined by law, is known as diversion.¹

This paper is a proposal to undertake a two-year pilot project in Hamilton-Wentworth to test the effectiveness of diversion procedure for dealing with shoplifters.

PROPOSAL FOR A DIVERSION PILOT PROJECT

1. The Purpose of Diversion:

Federal and provincial levels of government have produced a number of papers concerning diversion. The Law Reform Commission of Canada published a Working Paper on Diversion in January, 1975. Also, a paper by E.K. Glinfort, Formal Criminal Justice Diversion, was prepared for the Federal-Provincial Deputy Ministers Committee on Diversion. The following quotes are taken from that paper:

During the past one hundred years or more, criminal law has expanded at an incredible rate. The willingness and capacity of simpler societies to refer only the most threatening and insoluble conflicts to a mystical and definite resolution by the Courts has been replaced by a general application of responsibility for most problems to the 'specialists'. Penal sanctions are being attached to all kinds of socially problematic behaviour, much of which is neither considered dangerous or even immoral by a majority of citizens.²

Recognition that the criminal law is overused, that too much conduct has been swept under its scope, that resulting caseloads are excessive and impede the efforts to deal with serious crimes and that existing measures to cope with the pressure are inadequate and lack resources to effectively reverse this trend, provides a powerful pragmatic argument for a new approach.³

The above quote that criminal law is overused and that too much conduct has been swept under its scope, implies that regardless of the Courts' capacity to handle the influx, this trend is, in and of itself, neither healthy nor desirable. When it is stated that "penal sanctions are being attached to all kinds of socially problematic behaviour", the implication is that it is not always appropriate to find legal solutions to behaviour problems.

Such a trend is perhaps both a cause and an effect of communities finding it all too easy not to become involved, but rather leaving the problem for specialists to deal with. Increased involvement of citizens in our modern cities is considered by many authorities to be potentially a deterrent to anti-social behaviour. In relation to communities accepting more responsibility for dealing with problem behaviour, Glinfort makes the observation that such a process "may well strengthen throughout society a greater sense of community, whether rooted in neighbourhood, interest, faith or whatever".⁴

A second reason for official interest in diversion is that the criminal justice system is overloaded and hampered in its efforts to be effective with serious offenders.

In a free society, it does not seem appropriate (nor economical) to expand the resources and manpower of the justice system in order to stay ahead of the influx of cases and perhaps to encourage the overuse of criminal law.

The general rationale in support of developing diversion programs then, focuses on two important considerations. First of all, it is in the community interest for citizens to take more rather than less responsibility in dealing with socially problematic behaviour. Secondly, the criminal justice system needs to be relieved of its overcrowded dockets in order that the system can concentrate on the more serious problems.

2. Review of the Literature:

Numerous diversionary programs have been attempted, mostly in the United States, but little evaluative research has been carried out on these programs, so it is difficult to know much about the effectiveness of various models.

It also appears that a large number of diversion programs are either for juveniles, or for some form of addiction cases. In both these situations, there is an emphasis on treatment as opposed to punishment. The treatment model assumes some sort of emotional or social ailment or defect. An important aspect of this proposal is to avoid beginning with such an assumption.

An information package was produced for the Federal-Provincial Sub-Committee on Diversion. This information package included a description of ten diversion projects in Canada and the United States. The programs described include a broad cross-section in terms of the level and method of screening, eligibility requirements, and general operation of the program.

Many of the programs were within the criminal justice system or under the control of the Court. Only one program did not have provision for reinstating due process if an offender was unco-operative. If a purpose of diversion is to remove concern for certain problematic behaviour from the criminal justice system, these programs are not altogether succeeding.

Two rather unique programs were mentioned. The "Pilot Alberta Restitution Centre" is basically to assess the contract of restitution as a rehabilitation instrument. "The program has authority to negotiate with victim and offender, and to formulate a restitution contract....The emphasis...has shifted to a concern over fulfilling the restitution contract, rather than over 'policing' the supervised offender".⁵ This restitution contract method will be tested at the pre-trial, post-trial, and post incarceration levels. It is a departure from the usual treatment model. This mediation/education approach is consistent with the approach being advocated in our proposal. However, in shoplifting offences, the stolen articles are seized and restitution is automatic.

The second unique program is called the North York Pilot Project. It is for traffic offences and it operates outside the justice system. A lay tribunal hears cases and imposes sentences. One option open to minor traffic offenders is to appear at the tribunal, plead guilty and explain mitigating circumstances. A hearing officer will discuss the circumstances, discuss the offender's driving record which appears on a display screen, and "passes sentence". If driver-training is thought to be needed, the hearing officer recommends a specific course. Disposition is withheld until the course is completed. In this program, an educational component is added. The program was thoroughly evaluated but that information isn't available yet.

Many of the diversion programs make use of community resources and have a treatment focus. In all cases, there appears to be some lowering of recidivism, although effectiveness of treatment was not always evaluated.

Two cautions which appear repeatedly in the literature are:

- a) That clearly identifiable offences should be used to determine eligibility for diversion. This facilitates evaluation and where successful, a new attitude towards the offence.
- b) There are very complicated issues around individual rights. In fact, at present, there is no provision in law for diversion procedures.

3. Objectives of this Proposal:

We have discussed the main reasons for a general interest in the concepts and implementation of diversion procedures. In this proposal, our objective in cases specified by our criteria, is

to develop a procedure which is more relevant to the needs of the individual and to the needs of the community.

This implies something more than improved behaviour, it implies "the re-establishment of the offender in his relationship with the victim (whether that be an individual, community, or social society)".⁶ Basically, the aim of this program is to promote improved socialization both in terms of behaviour and in terms of individual/community relations. We wish to encourage the individual to take responsibility for his behaviour and to encourage the community to take responsibility for assisting in the process.

a) Individual needs:

The Law Reform Commission makes the following statement:

"Restraint in the use of criminal law is demanded in the name of justice. It is unjust and unreasonable to inflict upon a wrongdoer more harm than necessary...".⁷

For many minor offences, the adversary context of the judicial system is perhaps inappropriate. There must be a willingness to experiment with a more positive, i.e., educational approach.

Secondly, the response to criminal action should be immediate. In a speech by the Hon. Roy McMurtry, Ontario Attorney General, he quoted a number of important principles (see Appendix 1) against which he said specific proposals for diversion must be measured. One of these principles is that "punishment must be inflicted with speed and certainty, in order to create the closest possible association in people's minds between crime and its inevitable penalty....."⁸ Undue delays created by backed-up Court dockets are contrary to this principle. A measure of success of any alternative to due process must include this principle of expedient response.

b) Community needs:

Public safety or public protection is the concern most often mentioned in relation to community need in this context. In terms of petty shoplifting, this means cutting down the incidence and being sure offenders don't repeat. The common notion is that stiff consequences act as a deterrent for most people. In an earlier study of the Social Planning and Research Council entitled Youth and the Law, there is discussion of deterrents to crime, as found in the literature. Apparently, there is little research on the subject but the following comment is made:

"It appears that different kinds of things may be effective for deterring different crimes among different target populations. The generally most effective deterrent to crime is the internalized mores. Punishment has some impact, especially on acts that are not generally seen as making one a 'criminal'."9

The approach in this proposal is aimed at the clarification and encouragement of internalized mores.

As suggested previously, it is also in the community interest to alleviate the burden on the Courts and the rest of the criminal justice system in order to permit proper attention to more serious offenders. It is a sub-objective of this proposed program that in the long run, relief would be provided to the Courts.

Lastly, the effective allocation of public funds is receiving increasing attention by the community, especially in these times of financial restraint. A cost comparison of Court versus diversion process will be part of the evaluation.

4. Target Population:

In determining target population, that is those who would be eligible for diversion, certain principles have been followed. One of the criticisms of many diversion programs is that they tend to serve a middle-class clientele. Much of the literature attempts to correct this by recommending an equitable system which does not leave room for discretionary judgements. Also, an effort was made to begin with a specific easily distinguishable group of offences. As mentioned, such an approach not only facilitates evaluation, but also it facilitates gaining public acceptance.

The offence of petty theft (shoplifting) was chosen. According to the literature, the incidence of shoplifting is widespread, but most offenders tend not to repeat once they have been caught. Such an offence seems particularly appropriate in considering alternatives to the criminal justice process.

It is recommended that the terms of eligibility for this proposed project be:

- a) Theft under \$200. (Shoplifting).
- b) First offenders. (This means no adult record).
- c) Those who are aged 16, 17, and 18. (In the event that the Youth in Conflict with the Law Bill is passed, age limits would be adjusted accordingly.)
- d) The approval of the complainant is required.
- e) The approval of the offender is required.
(The alleged offender must have the opportunity to choose the judicial process at each step).

The age criterion is suggested as it was considered desirable to begin with a small manageable program. Court

statistics do not separate out first offenders nor shoplifting, but from April to August, 1976, there were 253 charges of theft under \$200 in the Hamilton Court for ages 16-19. From February 2 to October 1, 1976, three large department stores in Hamilton laid a total of 67 charges involving 16-18 year olds. It is estimated that 200 cases per year would meet the criteria of our target population. However, the age criterion may need to be adjusted to insure an adequate number of referrals. This adjustment should not occur before three months of experience.

5. Procedure:

a) Screening:

Who makes the decision to divert offenders into the diversion stream and at what point? One of the important principles to observe in this connection is that only individuals who would otherwise go to Court should be diverted. Any system which attracts referrals who would otherwise just be admonished is not addressing the problem.

Storekeepers in small stores and security systems in large stores often deal with many offenders in their own way. This proposal is not in any way considered a substitute for informal diversion which already exists. Store security should be encouraged to continue with whatever informal diversion they presently exercise.

In Hamilton-Wentworth, the present procedure for dealing with adult shoplifters is as follows: In every case that the police are called, it is for the purpose of laying a charge. When the offender is identified, a check is made of the records in order to determine if the individual has been involved in previous incidents.

If it is a first offence, which is the situation that is of interest to us, the individual is issued a "notice to appear" and allowed to leave. The police officer completes a report which goes to his sergeant and is then filed. A "crown sheet" is also completed and sent to the Crown's office. In the case of large stores with security personnel, the crown sheet is usually completed and forwarded by the store. A copy of the crown sheet is attached as Appendix 3.

In developing a proposed screening procedure, two somewhat conflicting principles were taken into account. On the one hand, we wished to make sure that penetration into the criminal justice system was minimal. On the other hand, it was important that all individuals who fit the eligibility criteria should have an opportunity to choose diversion, or the Court alternative.

It is recommended that screening to the diversion procedure be accomplished at the scene of the offence by the store-security and the investigating police officer. The problem here is that large numbers of police and security people have not only to know about, but approve of, the diversion procedure. It must be assumed that there will be cases of eligible offenders who will slip through such a screening process. These could and should be picked up at the next level in the justice system, i.e., the Court administrator.

Therefore, there would be two points where screening can take place. First, at the point that the police are called and the individual's record is checked, those who are eligible should be given the opportunity to choose diversion. A police report would be completed, but not a crown sheet, and a notice to appear would not be issued.

The staff person hired for the diversion program would obtain a copy of the police report from the sergeant who receives the report.

Second, in situations where a charge was laid but the individual was eligible for diversion and had not been given the opportunity to choose, it is recommended that such instances be screened by the Court administration. The diversion staff person should then be in touch with the offender and if a choice is made for diversion, the charge should be withdrawn. (This of course involves legal complications which would need to be resolved beforehand).

b) Disposition:

As has been mentioned throughout this proposal, we recommend an educational approach to these offenders. It is suggested that the offenders be expected to attend four discussion groups (rap sessions) which would be two hours each and completed in the space of one month.

"Experiential learning" is the educational method recommended. The community problem of shoplifting would be presented to the group for their ideas about prevention and correction. Liberal use of community resources would be important. For example, under the next heading "organization" we discuss the formation of a community committee. Included in the responsibilities of this committee would be the expectation that individual members become involved in some of the educational sessions with the diverted individuals. In essence, the approach involves clarifying values and raising the level of consciousness about one's behaviour.

It is recognized that the single approach recommended for this pilot project will not be appropriate for all the individuals who would be eligible for diversion. Where indicated, individuals who require more comprehensive help would be referred to the appropriate agency.

We envision making an effort to minimize the element of coercion. We recommend that due process not be reinstated due to lack of co-operation, and that there be no threat of a possible charge being laid. There would be follow-up to individuals who fail to report, but the follow up would just be checking and encouraging participation.

It may be argued that the lack of a pending charge will encourage a high drop-out rate. However, first offenders for shoplifting often receive an "absolute discharge" anyway. In addition, this proposed program attempts to avoid the usual adversary context and therefore, the coercive nature of a pending charge.

Individuals who went through the diversion procedure once would not be eligible for diversion in the event of subsequent offences. It is recommended that information regarding the individual's participation in the diversion process be available for pre-sentence reports. Participation is part of the history and should not be kept from a judge, following a conviction.

c) Organization:

A proposed budget for a two-year project is attached as Appendix 2.

A staff co-ordinator would be recruited. The duties of the staff person would include: working closely with

the police and Courts in order to accomplish the screening process; taking responsibility for the organization and operation of the sessions with the diverted individuals; doing the necessary follow-up and referral that may be involved with particular individuals; reporting to a community committee and working with the committee to educate the community; and taking responsibility for keeping all records necessary for monitoring and evaluating the project. Secretarial support would be required.

In addition to a full-time staff person, a voluntary community board should be set up. The purpose of this board or committee would be two-fold. Firstly, the members would be expected to participate in some sessions involving the offenders. Also the staff person would be accountable to this committee, which would monitor the overall program. Without infringing on offenders' rights to confidentiality, the decisions and activities of the diversion program would be public and open to review.

A second purpose of a community committee has to do with educating the public. In conjunction with the staff person, the committee would be expected to make the program known in the community. Members of the committee may be particularly helpful in presenting the program to police and shopping-mall personnel.

This proposal does not attempt to specify the size or representation that would be desirable for such a committee. It seems evident that police and security people, businessmen, and citizens at large, would be represented.

6. Individual Rights:

The protection of individual rights has received a great deal of discussion in the literature in relation to diversion projects. The particular concerns are discussed below along with an explanation of how these concerns are approached in this proposal.

a) Is the procedure equitable?

"The extent and effectiveness of diversion for the more affluent has been highlighted by the 'inner crime' studies of the last decade, which have indicated a fairly even distribution of criminal behaviour throughout all social classes. Since the lower socio-economic groups are over-represented in the processed offender group, it might suggest that the informal diversion procedures work to the exclusion of the lower classes".¹⁰

In consideration of this concern that all offenders have an equal opportunity to choose diversion, an effort has been made to specify a clearly identifiable target group for our proposed diversion project. By specifying objective criteria and by automatically accepting all individuals who meet those criteria, the program can be defended as being equitable.

b) The status of due process:

The offender always has the option at any point to proceed with the judicial process. So long as voluntary access to the normal court process exists, there is this safeguard to the rights of the offender.

In terms of the Crown reinstating due process if a diverted offender is not co-operative, there are problems around individual rights. For example, is there an aura of invoking double jeopardy and what is admissable evidence?

As this program is visualized, once an individual has been screened into the diversion stream, he will not be charged on the offence in question.

c) Confidentiality:

The literature indicates that all diversion projects are careful to protect individual rights to confidentiality. This would also be a policy of this proposal.

For this reason, if individual groups decided to put together a media presentation, or some kind of personal presentation, any individual not wishing to so participate would be free to opt out.

The only event in which it is recommended that an individual's identity be divulged, is for the purpose of pre-sentence reports should there be subsequent charges.

7. Evaluation:

An evaluation design, A Proposed Approach to the Evaluation of the Diversion Program, is attached to this paper as Appendix No. 4.

What the evaluation is expected to tell us is:

- some measure of the level of public participation;
- the proportion of diverted individuals who co-operated and followed through;
- any changes in the rate of recidivism;
- the reduced number of Court appearances;
- the reduced amount of time between offence and response.

In addition to the above, it is important to carry out some testing of attitudes. This not only involves judges, prosecutors, police officers and probation officials, but we are also interested in the attitudes of the public at large.

FOOTNOTES

1. Ekstedt, John: Criminal Legislation Procedures and Other Forms of Social Control in the Prevention of Crime; "Changes in judicial procedure and the diversion of offenders - Consultant's introductory remarks": A paper prepared for the United Nations Congress on the prevention of crime and the treatment of offenders - 1975 (cancelled); p.1.
2. Glinfort, E.K: Formal Criminal Justice Diversion: Working Paper prepared for the Federal-Provincial Deputy Ministers Committee on Diversion; April, 1975. p.1.
3. Ibid, p.3.
4. Ibid, p.5.
5. Glinfort, E.K. & Fisher, P.D: Information Package on Diversion, Federal-Provincial Sub-Committee on Diversion, May, 1975.
6. Ekstedt, John. Op, Cit. p.2.
7. Law Reform Commission of Canada, Working Paper No. 7. Diversion; January, 1975, p.3.
8. Statement by the Attorney General to the St. Leonard's Society; Conference on sentencing options and their implications; April, 1976, p.16.
9. Social Planning and Research Council of Hamilton and District, Youth and the Law: A report on knowledge about the law. June 14, 1974. p.62.
10. Glinfort, E.K: Op Cit., p.2.

APPENDIX 1

Professor Leon Radzinowicz, surely one of the giants of modern criminology, recently, listed a number of the central tenets which have historically exerted an influence upon our contemporary view of the criminal process. These principles include the following propositions:

- 1) The law should restrict the individual as little as possible. It is no part of its function to enforce moral virtues as such. Laws not essential to serve the needs of a particular society uselessly increase the tally of crime.
- 2) The law should guarantee the rights of the accused at all stages of criminal justice.
- 3) The law should give clear and precise knowledge of what is forbidden and of the sanction attached to disobedience.
- 4) The law should be set out in such a form so that people may judge how their liberties were being protected.
- 5) Punishment is justified only in so far as the offender has infringed the rights of others.
- 6) The severity of the law should be drastically curtailed; it should be no more than proportionate to the crime committed, and it should not go beyond what is necessary to deter the criminal and others from injuring their fellows. It should be just sufficient to ensure that the penalty outweighs the advantage derived from the crime.
- 7) The nature of the penalty should correspond with that of the crime; fines would suffice for minor offences but more severe penalties should follow crimes of violence.
- 8) Punishments must be inflicted with speed and certainty, in order to create the closest possible association in people's minds between crime and its inevitable penalty. This would be easier to achieve if sanctions were seen as just and moderate.
- 9) Exemplary punishment must be ruled out as unjust. Likewise, "reformation" must not be thrust upon criminals, they should not be compelled to undergo anything except the legal punishment which relates to the offence.

APPENDIX 2

BUDGET FOR DIVERSION PROJECT

	<u>1977</u>		<u>1978*</u>
<u>Salaries</u>			
1 - professional staff person	16,000	17,280	
1 - secretary/bookkeeper	8,000	8,640	
1 - part-time researcher	<u>3,200</u>	<u>3,500</u>	
Total Salaries	27,200		29,420
Benefits	1,500		1,580
Telephone and Telegraph	360		400
Supplies	1,500		1,500
Postage	600		650
Occupancy	4,000		4,000
Printing	600		600
Local Transportation	600		600
Conferences and Meetings	200		200
Equipment	2,700		---
Miscellaneous	500		600
	39,760		39,550
<u>Opinion Survey</u>			
Interviews: 1300 for 1,000 complete telephone interviews at \$1.30 each	1,700	Add 10%	1,870
Coding: 100 hrs. at 6.05 hr.	605	Add 10%	665
Keypunching: 1,000 cards @ 25¢ card	250	Add 10%	275
Computer Programming and time	100	Add 10%	110
TOTAL:	\$ 42,415		42,470

*1978 Budget assumes program is not expanded.

APPENDIX 3

CROWN SHEET (SHOPLIFTING)

ARRESTED ☐ SUMMONED ☐ REPORTING OFFICER _____ # _____

DATE OF OFFENCE _____ 19____ TIME _____

ACCUSED NAME _____ AGE _____

ADDRESS _____

PLACE OF EMPLOYMENT _____ TELEPHONE _____

CHARGE: THEFT UNDER \$50 ☐ POSS. UNDER \$50 ☐ THEFT OVER \$50 ☐ POSS. OVER \$50 ☐

MERCHANDISE STOLEN: _____

VALUE _____

COMPLAINANT
STORE

NAME _____ TELEPHONE _____

ADDRESS _____

ACCUSED'S H.P.D. # (if any) _____

SOBRIETY: INTOXICATED ☐ H.B.D. ☐ H.N.B.D. ☐ UNDER INFLUENCE OF DRUGS

INTERPRETOR REQUIRED: YES ☐ NO ☐ LANGUAGE SPOKEN _____

AMOUNT OF MONEY ON ACCUSED AT TIME OF OFFENCE _____

WHERE STOPPED: INSIDE OF STORE ☐ OUTSIDE OF STORE ☐

COMPLAINANT
WITNESS

NAME _____ TELEPHONE _____

ADDRESS _____

OTHER SECURITY WITNESSES (NAMES - ADDRESSES - TELEPHONE NUMBERS)

EVIDENCE (SHORT NARRATIVE OF FACTS NOT COVERED ABOVE)

Judicial Consequences

The program will also be evaluated in terms of its effect upon court time; recidivism; and the time lapse between offence and response.

For the year preceding the institution of the program, the amount of court time spent dealing with shoplifters and the average time lapse between offence and response will be calculated. The same calculation will be made for the first year of program operation and the results from the two years will be compared.

For the one year period preceding the institution of the program, the rate of recidivism amongst shoplifters will be calculated. This will be compared to the recidivism rate amongst diversion recipients, and court recipients during the first year of the program operation. It is possible that the period of one year may be too short for adequate indices of recidivism. For example, most recidivism may occur in the second or third year after the first offence. Police records of shoplifters should, therefore, be analyzed to calculate the recidivism time frame. This examination need not occur prior to the institution of the program.

The information concerning court time and recidivism will be utilized in a cost analysis of the diversion vs the court process.

* * * * *

URBAN/MU

HAMILTON PUBLIC LIBRARY



3 2022 21292752 5